

#153

Chapter Ind-UC 115

EFFECT OF BUSINESS TRANSFERS

Ind-UC 115.01 Transfer of business

Ind-UC 115.01 Transfer of business. (1) Each "employer" who transfers any of the assets of his business by any means whatever (otherwise than in the ordinary course of trade) shall notify the commission in writing of such transfer, by the due-date of his contribution report for the month in which the transfer date occurred. The transferor and transferee shall thereafter promptly submit to the commission in writing such information as it may request relating to the transfer. Based on such information, and on any other relevant information (obtained by audit or otherwise) in the commission's files, the commission shall determine whether the transfer constituted a "transfer of business" within the meaning of section 108.16 (8), Wis. Stats., and shall notify the transferor and transferee in writing accordingly.

(2) The conditions set out in section 108.16 (8) (a), Wis. Stats., for determining the existence of a transfer of business shall be construed with reference to ordinary usage of terms contained herein and with reference to other statutory rules of construction applicable by the statutes of Wisconsin.

(3) In each case where the commission determines that there has been a transfer of business within the meaning of section 108.16 (8), Wis. Stats., the commission shall determine what amounts and records (relating to the transferor's unemployment compensation experience and employees with respect to the transferred business) are to be transferred to the account and related records of the transferee (successor), and shall notify the transferor and transferee in writing accordingly. Consistently with said section, the following provisions of this section shall govern each such transfer and determination.

(4) The commission shall determine the relative amount and proportion (hereinafter called "transfer percentage") of the transferor's total "payroll", for a recent and representative one-year period preceding the transfer date, which is properly assignable to the transferred business. In determining such relative amount (and transfer percentage), the payroll for overhead or combined positions shall, to the extent that each payroll is in fact affected by the transfer, be allocated in the same proportion as the direct payrolls involved, or on such other reasonable basis as may better correspond with and reflect the facts of the transfer.

(5) As of the transfer date, and as of any relevant prior date, the treasurer of the unemployment reserve fund shall apply the transfer percentage to the plus or minus balance in the transferor's

account on such date (including in such balance any contributions then accrued but unpaid), and shall make a corresponding transfer from the transferor's account to the transferee's account as of such date.

(6) Correspondingly, the transferor's account and the transferee's account (namely, the commission's records relating to such accounts for the purpose of determining their respective contribution rates from and after the transfer date) shall be adjusted by said treasurer, in order to make each such account reflect the entire unemployment compensation experience (significant for said purpose) attributable to the business operated by each from and after the transfer date, as follows:

(a) There shall be transferred from the transferor's account and allocated to the transferee's account (for the calendar year in which the transfer occurred, up to the transfer date, and for each of the two most recently completed calendar years) that amount of the transferor's "payroll" for each such period determined by applying the transfer percentage thereto.

(b) Based on the adjustments resulting from the foregoing provisions of this section, said treasurer shall determine (as of the transfer date) the adjusted status of the transferor's account and of the transferee's account under section 108.18, Wis. Stats., as of the close of the applicable "computation date", and shall determine accordingly the contribution rate which applies to each from the transfer date on (until a new rate applies under section 108.18, Wis. Stats.).

(7) All benefits paid after the transfer date, based on prior services for the transferor in the transferred business, shall be charged against the transferee's account (including that portion transferred from the transferor's account with a view to financing such benefits). In this connection the commission shall determine what individual employes are or may still become eligible for such benefit payments. With respect to such individuals, the commission shall correspondingly adjust its files, and shall require the transferor and transferee to file such benefit liability reports (covering such past credit weeks) as may be needed by the commission to assure the prompt payment and the correct charging of benefits consistently with this section.

(8) The transferor shall, promptly after notice from the commission, supply to the transferee such payroll records, relating to individuals employed by the transferor in the transferred business (as determined by the commission), as will enable the transferee to file whatever reports the commission may thereafter require from him for benefit purposes with respect to such individuals.

(9) From and after the transfer date, the transferee shall, with respect to all past employment by the transferor in the transferred business, take the place of the transferor, and shall be treated as a single employer with respect to such past employment and any future employment by the transferee of the same employes, in determining their eligibility and benefits under chapter 108, Wis. Stats.

(10) Unless the context clearly shows otherwise, the term "commission" refers to its deputy under section 108.10, Wis. Stats.; and any determination made hereunder by said deputy shall be subject to review in accordance with the provisions of said section.